

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I.(a) PLAINTIFFS

James H. Gorbey, Jr., Administrator of the Estate of Marissa Rose Fishman, deceased
and

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Delaware
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Air Base Carpet Mart, Inc. d/b/a Air Base Distributing, Inc. d/b/a Air Base Carpet Mart, Richard Longwill and Barbara Longwill

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT New Castle, Delaware

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Thomas R. Kline, Esquire
Matthew A. Casey, Esquire
KLINE & SPECTER, P.C.
1525 Locust Street, 19th Floor
Philadelphia, PA 19102
215-772-1000

ATTORNEYS (IF KNOWN)

Edward C. Mintzer, Jr., Esquire
Delia A. Clark, Esquire
Rawle & Henderson, LLP
The Widener Building
One South Penn Square
Philadelphia, PA 19107
215-575-4200

Daniel J. Hart, Esquire
MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
1845 Walnut Street
Philadelphia, PA 19103-4797
215-575-2812

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

<input type="checkbox"/> 1. U.S. Government Plaintiff	<input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2. U.S. Government Defendant	<input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

For diversity cases only

		PTF	DEF	(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)	
Citizen of This State		<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State		<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated or Principal Place of Business in Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country		<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Judge from Magistrate Judgment
--	--	--	---	--	---	---

Appeal to District

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/ PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Exc. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employer's Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury--Med Malpractice <input type="checkbox"/> 365 Personal Injury--Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21, USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> Occupational Safety/Health	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395FF) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RIS (405(g))
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Premises Liability 28 U.S.C. § 1332

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
VIII. RELATED CASE(S) IF ANY (See Instructions):	JUDGE <u>Judge</u> DOCKET NUMBER <u>1:05-cv-00211-JM</u>		
DATE: <u>8-27-04</u>	SIGNATURE OF ATTORNEY OF RECORD <u>Teresa M. Kelly</u>		
FOR OFFICE USE ONLY			
RECEIPT #	AMOUNT \$	APPLYING IFP	JUDGE MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

James H. Gorbey, Jr., Administrator of the Estate of Marissa Rose Fishman, deceased	:	CIVIL ACTION
<u>Plaintiff</u>	:	NO.
v.	:	
Air Base Carpet Mart, Inc. d/b/a Air Base Distributing, Inc. d/b/a Air Base Carpet Mart, Richard Longwill and Barbara Longwill	:	

Defendant

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See §1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to a clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a)	Habeas Corpus – Cases brought under 28 U.S.C. §2441 through §2255	(<input type="checkbox"/>)
(b)	Social Security – Cases requesting review of a decision of the Secretary of Health and Human Service denying plaintiff Social Security Benefits.	(<input type="checkbox"/>)
(c)	Arbitration – Cases required to be designated for arbitration under Local Civil Rule 8.	(<input type="checkbox"/>)
(d)	Asbestos -- Cases involving claims for personal injury or property damage from exposure to asbestos	(<input type="checkbox"/>)
(e)	Special Management -- Cases that do not fall into tracts (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases)	(<input type="checkbox"/>)
(f)	Standard Management -- Cases that do not fall into any one of the other tracks.	(<input checked="" type="checkbox"/>)

August 27, 2004

(Date)

Edward C. Mintzer, Jr.

Attorney-at-law

Air Base Carpet Mart, Inc. d/b/a Air Base
Distributing, Inc. d/b/a Air Base Carpet Mart,
Richard Longwill and Barbara Longwill
(represented in their employment capacity only)
Attorney for

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA – DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: James H. Gorbey, Jr., Esquire, Administrator of the Estate of Marissa Rose Fishman 110 West Front Street, Media, Pennsylvania 19063

Address of Defendant: Air Base Carpet Mart, 230 N. Dupont Highway, New Castle, DE 19720

Place of Accident, incident or Transaction: 3220 Coachman Road, Surrey Park, Wilmington, DE 19803
(Use Reverse Side for Additional Space)

Does this case involve multidistrict litigation possibilities? Yes No

RELATED CASE IF ANY -- N/A

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes No

CIVIL: (Place X in ONE CATEGORY ONLY)***A. Federal Question Cases:***

1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act – Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. All other Federal Question Cases
 (please specify)

B. Diversity Jurisdiction Cases:

1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify) - Premises Liability
7. Products Liability
8. Products Liability – Asbestos
9. All other Diversity Cases
 (Please specify)

ARBITRATION CERTIFICATION*(Check appropriate category)*

I, EDWARD C. MINTZER, JR. , counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that, to the best of my knowledge and belief, the damages Recoverable in this civil action case exceed the sum of \$150,000 exclusive of interest and cost;

Relief other than monetary damages is sought.

DATE: 8-27-04 Edward C. Mintzer, Jr. 30300
 Attorney-at-Law Attorney I.D. #

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 8-27-04 Edward C. Mintzer, Jr. 30300
 Attorney-at-Law Attorney I.D. #

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES H. GORBEY, JR., Administrator of the ESTATE OF MARISSA ROSE FISHMAN, deceased	:	
Plaintiff,	:	CIVIL ACTION NO.:
v.	:	
RICHARD LONGWILL, and	:	
BARBARA LONGWILL, and	:	
AIR BASE CARPET MART, INC. d/b/a AIR BASE DISTRIBUTING, INC. d/b/a AIR BASE CARPET MART and	:	
AIR BASE DISTRIBUTING, INC. Defendants.	:	

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA:

Defendants, Air Base Carpet Mart, Inc. d/b/a Air Base Distributing, Inc., d/b/a Air Base Carpet Mart, by and through their attorneys, Rawle & Henderson LLP, respectfully avers as follows:

1. On or about March 16, 2004 a Complaint was filed by plaintiff, James H. Gorbey (an Attorney in Media, Pennsylvania), as Administrator in the Court of Common Pleas of Philadelphia County against Air Base Carpet Mart, Inc. d/b/a Air Base Distributing, Inc., d/b/a Air Base Carpet Mart (“hereinafter Air Base”), Richard and Barbara Longwill in their alleged

official capacity as stockholders, and Richard and Barbara Longwill as individuals in connection with drowning of the Longwill's granddaughter, which occurred on August 30, 2002 at the home of co-defendants Richard and Barbara Longwill located in Wilmington, Delaware. (*See Exhibit "A" – Plaintiff's Complaint.*)

2. Defendant Air Base Carpet Mart (hereinafter "Air Base") filed Preliminary Objections on or about April 12, 2004. Plaintiff filed an Amended Complaint on or about May 3, 2004 which was not served until May 11, 2004 .

3. Defendant Air Base filed a second set of Preliminary Objections on or about may 25, 2004. Plaintiff filed a second amended complaint on or about June 14, 2004.

4. Preliminary Objections to the Second Amended Complaint were filed on July 1, 2004. As a result, plaintiff filed a Third Amended Complaint on or about July 21, 2004.

5. As the Third Amended Complaint made few substantive changes, defendant Air Base filed Preliminary Objections to the Third Amended Complaint on or about July 30, 2004.

6. Plaintiff filed its Fourth Amended Complaint on or about August 18, 2004.

7. The initial Complaint, being original process in this case, was first received by defendant Air Base no earlier than March 22, 2004. However, the complaint named as co-defendant Teresa Zavala Garcia, who as alleged to be a resident of the Commonwealth of Pennsylvania.

8. In the Fourth Amended Complaint, plaintiff has deleted Teresa Zavala Garcia as a named defendant. *See* Fourth Amended Complaint attached as Exhibit "B".

9. In the Fourth Amended Complaint, plaintiff demands damages in "an amount in excess of \$50,000. . . ." Specifically, plaintiff claims damages recoverable under the Pennsylvania Wrongful Death Act, and Survival Act "arising from Marissa Rose Fishman's drowning and subsequent death." (*See Exhibit "B" – Plaintiff's Fourth Amended Complaint, ¶20.*)

10. Based upon a fair reading of the Fourth Amended Complaint, plaintiff has set forth a claim in which an amount in excess of the jurisdictional limit of \$75,000, exclusive of interests and costs, may be at stake.

11. At all material times, plaintiff, James H. Gorbey, Jr. the Administrator of the Estate of Marissa Rose Fishman, is and was a citizen of the Commonwealth of Pennsylvania. (*See Exhibit A – Plaintiff's Complaint at ¶1*)

12. Defendant, Richard and Barbara Longwill, at all material times, were and are citizens of the State of Delaware. (*See Exhibit "B" at ¶6.*)

13. Defendant, Air Base Carpet Mart, Inc., at all material times, was and is a corporation incorporated under the laws of the State of Delaware with its principal and only place of business in New Castle, Delaware.. *See Exhibit "B" at ¶4.*)

14. At all times material hereto, Air Base Distributing, Inc. is and was a Delaware corporation with its principal and only place of business located in Dover, Delaware. *See Exhibit "B" at ¶5.*)

15. This action satisfies the diversity of citizenship requirements for removal within the meaning of 28 U.S.C. §1332 in that:

- a) Plaintiff's and Defendant's citizenships are diverse;
 - 1) Plaintiff is a resident and citizen of the Commonwealth of Pennsylvania.
 - 2) Defendant, Richard and Barbara Longwill are not citizens of the Commonwealth of Pennsylvania.
 - 3) Defendants, Air Base Carpet Mart, Inc. and Air Base distributing, Inc., at all material times, were and are corporations incorporated under the laws of the State of Delaware with their principal places of business located in New Castle and Dover, Delaware, respectively.
- b) the amount in controversy exceeds the jurisdictional amount of \$75,000.

16. Furthermore, diversity of citizenship between these parties existed at the time the action sought to be removed was commenced and continues through the time of filing of this notice, such that defendant is entitled to removal pursuant to 28 U.S.C. §1441, as amended, and 28 U.S.C. §1446.

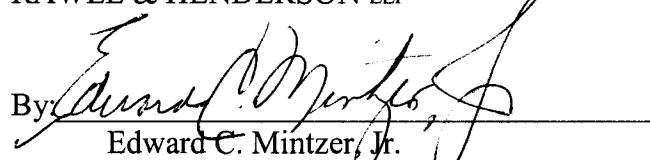
17. This Removal is timely filed within thirty days of receipt of the Fourth Amended Complaint in which Ms. Garcia was no longer named as a co-defendant, thus, it became apparent that this matter was removable pursuant to 28 U.S.C. §1446 (b).

18. For the reasons set forth herein, including the parties' diversity of citizenship and the amount in controversy as alleged by plaintiffs in excess of the jurisdictional amount,

defendants are entitled to removal pursuant to 28 U.S.C. §1441 as amended, and 28 U.S.C. §1446.

19. Richard and Barbara Longwill, as individuals, are represented by Daniel J. Hart of Marshall, Dennehey, Warner, Coleman and Goggin.
20. The co-defendants, Richard and Barbara Longwill, through their attorney consent to the removal of this action. (*See* Affidavit of Daniel Hart attached as Exhibit "C").

RAWLE & HENDERSON LLP

By 
Edward C. Mintzer, Jr.
Delia A. Clark
Attorneys for defendants,
Air Base Carpet Mart, Inc.
Air Base Carpet Mart, Inc. d/b/a Air Base
Distributing, Inc., d/b/a Air Base Carpet
Mart, and Richard Longwill and Barbara
Longwill (represented in their employment
capacity only)

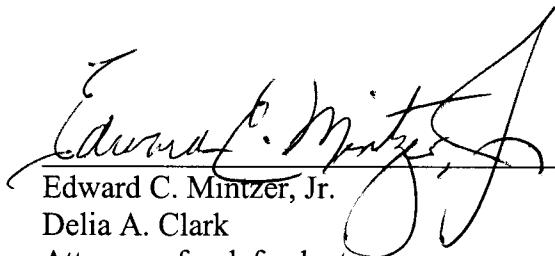
Dated: August 27, 2004

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Notice of Removal was served upon the following parties by First Class, U.S. Mail on the date below:

Thomas R. Kline, Esquire
Matthew A. Casey, Esquire
KLINE & SPECTER, P.C.
1525 Locust Street, 19th Floor
Philadelphia, PA 19102

Daniel J. Hart, Esquire
Marshall, Dennehey, Warner,
Coleman and Warner
1845 Walnut Street
Philadelphia, PA 19103-4797



Edward C. Mintzer, Jr.
Delia A. Clark
Attorneys for defendants,
Air Base Carpet Mart, Inc.
Air Base Carpet Mart, Inc. d/b/a Air Base
Distributing, Inc., d/b/a Air Base Carpet
Mart, and Richard Longwill and Barbara
Longwill (represented in their employment
capacity only)

Date: August 27, 2004